UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Tom Lundeen, individually, and
Nanette Lundeen, individually, and
Tom Lundeen and Nanette Lundeen on behalf of, and as parents and natural guardians of Molly Lundeen, a minor, and Michael Lundeen,

Plaintiffs,

Civ. No. 04-3220 (RHK/AJB)
MEMORANDUM OPINION AND ORDER

v.

Canadian Pacific Railway Company,
Canadian Pacific Limited,
Canadian Pacific Railway Limited, and
Soo Line Railroad Company,

Defendants.

Collin P. Dobrovolny and Bryan L. Van Grinsven, McGee, Hankla, Backes & Dobrovolny, PC, Minot, North Dakota, for Plaintiffs.

Timothy R. Thornton, Scott G. Knudson, and Kevin M. Decker, Briggs and Morgan, Minneapolis, Minnesota, for Defendants.

Introduction

This case (and thirty other "related" cases[1]) arises out of injuries sustained by the release of liquefied anhydrous ammonia after a train derailment in North Dakota. Before

[1] See Exhibit A (attached).

the Court is plaintiffs' second remand motion. For the reasons set forth below, the Court will grant the motion.

Background

Plaintiffs in this case are Tom and Nanette Lundeen, both individually and on behalf of Molly and Michael Lundeen (collectively, the "Lundeens"). Defendants are Canadian Pacific Railway Company, Canadian Pacific Limited, Canadian Pacific Railway Limited, and Soo Line Railroad Company (collectively, "CPR").

In June 2004, the Lundeens sued CPR in Minnesota state court. Among their original claims, they alleged that "CPR violated applicable state law . . . as well as United States law, resulting in the release of hazardous substances and which amount to contamination, pollution, unauthorized release of hazardous material and other violations of applicable 'environmental laws' . . . ." (Compl. Count Three ¶ V (emphasis added).)

In July 2004, CPR removed the case to this Court based upon federal question jurisdiction pursuant to 28 U.S.C. § 1441(a) and (b).[2] In August 2004, the Lundeens filed

[2] Section 1441(a) provides, in relevant part:

> Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. . . .

Section 1441(b) provides, in relevant part:

> Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. . . .

their first remand motion on the ground that no federal question jurisdiction existed. This Court denied that motion, finding that the face of the complaint—specifically, the reference to "United States law"—stated a federal question. Lundeen v. Canadian Pacific Ry. Co., 342 F. Supp. 2d 826, 829 (D. Minn. 2004).[3]

In November 2004, the Lundeens moved to amend their complaint to delete the federal claim and, in the alternative, to voluntarily dismiss that claim. (See Doc. Nos. 26, 29.) At the same time, they filed a motion, conditioned upon amendment of the complaint or voluntary dismissal of the federal claim, to remand to state court. (See Doc. No. 33.)

In January 2005, Magistrate Judge Boylan granted the Lundeens' motion to amend and determined that the motion to dismiss was moot. (Doc. No. 54.) CPR sought reimbursement for expenses incurred in opposing the Lundeens' motions, which it estimated at $5,000. (Id.) Considering that only the motions to amend and dismiss were pending before him, while the second remand motion was before the undersigned, Magistrate Judge Boylan ordered the Lundeens (and another moving party) to pay CPR a total of $2,000. (Id.)

In February 2005, the Lundeens filed an Amended Complaint. (Doc. No. 55.) The reference to "United States law," which had formed the basis for federal question

[3] The Lundeens declined to amend their Complaint at that time—even though the Court's inquiry of counsel should have made it abundantly clear that a request would have been granted.

jurisdiction, was deleted. The Court now considers the Lundeens' second remand motion.

Analysis

The Lundeens argue that this case should be remanded to state court because the federal claim has been deleted and only state-law claims remain. In Carnegie-Mellon University v. Cohill, 484 U.S. 343, 348 (1988), the Supreme Court considered whether a district court has discretion to remand a removed case to state court "when all federal-law claims have dropped out of the action and only pendant state-law claims remain." The plaintiffs in Cohill filed suit in state court alleging violations of state and federal age-discrimination laws, as well as state common-law claims. Id. at 345. Defendants removed on the basis of federal question jurisdiction. Id. Six months later, the plaintiffs moved to amend their complaint to delete the federal claim and moved to remand. Id. at 346. After granting the motion to amend, the district court remanded the action to state court. Id. The Supreme Court held that "a district court has discretion to remand to state court a removed case involving pendant claims upon a proper determination that retaining jurisdiction over the case would be inappropriate." Id. at 357. In exercising discretion to remand, district courts are to consider "the principles of economy, convenience, fairness, and comity." Id.

Under these principles, the Court finds that retaining jurisdiction over this case would be inappropriate. First, this case is in its initial stages and a remand would waste little judicial resources: no scheduling orders have been issued, no discovery has been

conducted, and no trial date has been set. Second, it is not inconvenient or unfair for CPR to litigate this matter in state court. Presently, CPR is defending cases in state court that arise out of the same train derailment. See e.g., Allende v. Soo Line R.R. Co., et al., Civ. No. 03-3093 (D. Minn. Jan. 29, 2004) (Report and Recommendation recommending case be remanded to state court). Finally, remand will avoid a determination of state-law claims by this Court that could conflict with state court decisions in the other derailment cases. See Cohill, 484 U.S. at 350-51. As noted in Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966), upon which the Cohill court relied, "[n]eedless decisions of state law [by federal courts] should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law."

CPR argues that the remand motion should be denied because the Lundeens have engaged in forum shopping. While the Cohill court recognized that "forum manipulation" is a factor to be considered when determining whether to remand a case, there is no "categorical prohibition" on remanding cases where the plaintiff has attempted to manipulate the forum. Cohill, 484 U.S. at 357. Here, the Court finds no forum manipulation has occurred that would prohibit remand. The Lundeens have explained that they had no desire to allege or pursue federal claims. Once this Court determined that they had alleged a federal claim, which was only a small portion of the original Complaint, they promptly moved to amend and remand. Moreover, to the extent that forum manipulation may have occurred, remand is still warranted given the weight of the factors pointing in favor of sending the case back to state court.

As the Supreme Court has recognized, "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendant jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." Id. at 350 n.7. Here, as in Cohill, the balance of factors points toward declining to exercise jurisdiction over the Lundeens' remaining state-law claims. Accordingly, the Court will grant the Lundeens' Motion to Remand Action.[4]

As a final matter, CPR seeks reimbursement of its costs and attorneys' fees. They argue that the Lundeens' federal claim, which has now been deleted, caused it "to research, draft, and file Notices of Removal, Notices of Filing of Removal, Opposition to Remand, Response to Motion to Remand, and Opposition to Motions to Amend or Dismiss Complaint and Remand Action." (CPR Supp. Opp'n Mem. at 4.) It fixes its costs at $4,650, which represents a $150 filing fee for each of the thirty-one removed cases. (Decker Aff. ¶ 1.) It fixes its reasonable attorneys' fees for "removing plaintiffs' case to this Court and responding to plaintiffs' two motions for remand" at $7,570. (Id. ¶

[4] Although the Lundeens primarily rely on Cohill in support of their remand motion, they also cite 28 U.S.C. § 1367(c)(2) and (3) as bases for remand. Section 1367(c)(2) and (3) provide that district courts may decline to exercise supplemental jurisdiction over state-law claims where "the claim substantially predominates over the claim or claims over which the district court has original jurisdiction" or where "the district court has dismissed all claims over which it has original jurisdiction." The Court finds that § 1367(c) provides additional support for remand. See In re Prairie Island Dakota Sioux, 21 F.3d 302, 304 (8th Cir. 1994) (affirming remand of removed case under § 1367(c) and Cohill where the plaintiff amended complaint to delete federal-law claims).

5.) Thus, CPR seeks $12,220 in total reimbursement. The Lundeens have not opposed CPR's request.

Considering the totality of the circumstances, the Court concludes that the Lundeens should reimburse CPR $3,500 for its attorneys' fees. When given the opportunity to eliminate the federal claim during the first remand motion, counsel for the Lundeens declined. His refusal to strike that claim caused CPR to litigate two otherwise unnecessary remand motions. In the Court's view, it is fair and just for the Lundeens to reimburse CPR for part of its attorneys' fees. However, it would not be fair or just to require the Lundeens to reimburse CPR for its thirty-one filing fees or for that portion of its attorneys' fees not associated with the remand motions. First, contrary to CPR's suggestion, the federal court litigation was not all for naught—it resulted in the elimination of a federal claim. Second, as exemplified by Cohill, there is always a risk when removing a case based on federal question jurisdiction that the complaint will be amended and the case remanded. Finally, this amount takes into account Magistrate Judge Boylan's order that the Lundeens (and another moving party) pay CPR $2,000.

Conclusion

Based on the foregoing, and all of the files, records, and proceedings herein, **IT IS ORDERED**:[5]

[5] As with the first remand motion, counsel have agreed that this Memorandum Opinion and Order will apply to each of the "related" cases identified in Exhibit A (attached).

1. The Lundeens' Motion to Remand Action (Doc. No. 33) is **GRANTED** and this matter, and the thirty "related" actions identified in Exhibit A (attached), shall be remanded to Hennepin County District Court; and

2. The Lundeens shall reimburse CPR for reasonable attorneys' fees in the total amount of $3,500 (this is in addition to the $2,000 ordered by Magistrate Judge Boylan).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 9, 2005

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge

Exhibit A

The "related" cases are:
Salling, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3221;
Darveaux, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3222;
Schafer, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3223;
Wickman v. Canadian Pacific Railway Co., et al., Civ. No. 04-3224;
Swenson, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3225;
Behnkie, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3282;
Carlson v. Canadian Pacific Railway Co., et al., Civ. No. 04-3283;
Crabbe, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3284;
Dahly, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3286;
Duchsherer, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3287;
Deutsch, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3288;
Flick v. Canadian Pacific Railway Co., et al., Civ. No. 04-3290;
Gleason v. Canadian Pacific Railway Co., et al., Civ. No. 04-3291;
Goerndt v. Canadian Pacific Railway Co., et al., Civ. No. 04-3292;
Gross, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3293;
Just v. Canadian Pacific Railway Co., et al., Civ. No. 04-3294;
Korgel v. Canadian Pacific Railway Co., et al., Civ. No. 04-3295;
McBride, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3296;
Muhlbradt v. Canadian Pacific Railway Co., et al., Civ. No. 04-3297;
Shigley v. Canadian Pacific Railway Co., et al., Civ. No. 04-3298;
Smith, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3299;
Todosichuk v. Canadian Pacific Railway Co., et al., Civ. No. 04-3300;
Hingst v. Canadian Pacific Railway Co., et al., Civ. No. 04-3301;
Freeman, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3303;
Weltzin v. Canadian Pacific Railway Co., et al., Civ. No. 04-3304;
Todd v. Canadian Pacific Railway Co., et al., Civ. No. 04-3305;
Lakoduk v. Canadian Pacific Railway Co., et al., Civ. No. 04-3306;
Westmeyer, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3307;
Slorby v. Canadian Pacific Railway Co., et al., Civ. No. 04-3309; and
Nisbet, et al. v. Canadian Pacific Railway Co., et al., Civ. No. 04-3311.